

705: Guardianship

- A. The Illinois LTCOP should always advocate for the wishes of a resident as determined by the LTCO's best investigatory and counseling efforts. It is appropriate, for example, for a LTCO to advocate on behalf of a resident who wishes to oppose a guardianship petition, who wishes to have his/her guardianship revoked or is being abused by the guardian.
- B. The Illinois LTCOP encourages residents and their families to execute and use Durable Powers of Attorney, Living Wills and representative payees whenever possible to avoid unnecessary guardianships. LTCOs should regard guardianships only as a last resort and when no other alternatives are available.
- C. The Illinois LTCOP and its Regional LTCOPs may advocate on behalf of a resident for the least restrictive or limited guardianship in proceedings to establish guardianship of the person. The LTCO may request that the court place specific limitations or instructions in the final guardianship order when the resident has voiced such a desire; e.g., that the guardian may not remove the resident from the nursing home, limit the resident's ability to visit friends or relatives, or limit the resident's access to funds.
- D. No Regional LTCOP or any designated LTCO shall serve as guardian of either the estate or the person, as a representative payee, or as an agent under a Durable Power of Attorney for any resident of a long term care facility, due to the potential conflict of interest or the appearance of a conflict of interest. This restriction does not apply to a LTCO's own family member.
- E. Nothing in this standard is meant to diminish the responsibilities of the LTCOP or individual LTCOs to provide information to residents, their families or the

community about the appropriate use of guardianship and its alternatives.

- F. An agency housing a Regional LTCOP may offer guardianship and representative payee services through a program other than the Regional LTCOP; however, the provider agency must have written policies that are shared with all guardianship, representative payee, and Regional LTCOP staff. Such written policies must:
1. acknowledge the potential inherent conflicts of interest faced in housing LTCO and guardianship services in the same agency;
 2. acknowledge that guardianship services are based on a “best interests” theory of service and that the LTCOP is grounded in an “empowerment” and advocacy theory of service and that such difference in approach and philosophy are the basis for real, potential and perceived conflicts of interest;
 3. assure that the Regional LTCOP and all designated LTCO will provide services to residents in accordance with the applicable state and federal law;
 4. assure that no LTCO will be subjected to intimidation, harassment, force, interference, retaliation, undue influence, or any other negative action if the LTCO, on behalf of a client, in good faith and after appropriate investigation, takes and pursues an adverse or differing position to the division of the agency providing guardianship and/or representative payee services;
 5. require any LTCO to notify the Office if the agency’s procedures are not being followed or if any LTCO is being subjected to intimidation, harassment, force,

interference, retaliation, undue influence, or any other negative action while acting in good faith as a LTCO; and

6. assure that no designated LTCO will work for the program providing guardianship or representative payee services due to a potential conflict of interest or the appearance of a conflict of interest.